

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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AMADEO SANCHEZ,

Plaintiff,

v.

NEVADA DEPARTMENT OF
CORRECTIONS; et al.,

Defendants.

3:11-cv-0310-LRH-WGC

ORDER

Before the court is defendant Renee Baker's ("Baker") objections to the Magistrate Judge's supplemental orders (Doc. ##29, 30¹). Doc. #31.

On October 5, 2011, defendant Baker filed a motion to dismiss, or alternatively, a motion for summary judgment with 88 pages of attached exhibits. *See* Doc. #16. The Magistrate Judge construed the motion as a motion for summary judgment on the basis that the attached exhibits involved factual issues relevant to the underlying action. *See* Doc. #29. Thereafter, the Magistrate Judge granted plaintiff Amadeo Sanchez ("Sanchez") leave to conduct limited discovery to oppose the motion for summary judgment (Doc. #29) and issued a scheduling order (Doc. #30). In response, Baker filed the present objections arguing that the limited discovery and scheduling order were not permitted under the local rules. *See* Doc. #31.

¹ Refers to the court's docket entry number.

1 Local Rule IB 3-1 authorizes a district judge to reconsider any pretrial matter referred to a
2 magistrate judge pursuant to LR IB 1-3 where it has been shown that the magistrate judge's order is
3 clearly erroneous or contrary to law. Here, the court has reviewed the documents and pleadings on
4 file in this matter and finds that the Magistrate's order is not clearly erroneous or contrary to law.

5 In his objection, defendant Baker challenges the Magistrate Judge's authority to allow
6 Sanchez to conduct discovery to oppose the motion for summary judgment. Baker contends that
7 allowing discovery is improper because he has not yet made an "appearance" in this action under
8 LR 16-1(b) because he has only filed a motion to dismiss and, therefore, Sanchez is not entitled to
9 any discovery. The court disagrees. The court finds that a motion to dismiss that contains attached
10 exhibits involving factual questions, correctly construed by the Magistrate Judge as a motion for
11 summary judgment, is an "appearance" under LR 16-1(b) sufficient to trigger both a scheduling
12 order and the initiation of discovery. Further, equity requires the court to allow Sanchez discovery
13 to oppose the factual assertions in support of Baker's motion. Therefore, the court finds that
14 Baker's objections to the Magistrate's orders are without merit. Accordingly, the court shall affirm
15 the Magistrate Judge's order.

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17 IT IS THEREFORE ORDERED that Defendant's objection to the Magistrate Judge's order
18 (Doc. #31) is DENIED. The Magistrate Judge's orders (Doc. ##29, 30) are AFFIRMED.

19 IT IS SO ORDERED.

20 DATED this 21st day of March, 2012.



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23 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE